



CALIFORNIA BOARD OF ACCOUNTANCY

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Initial Statement of Reasons

Related to *UPDATE #59* Regulation Notice

March 2007

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**INITIAL STATEMENT OF REASONS**

Hearing Date: May 11, 2007

Subject Matter of Proposed Regulations: Practice Privilege Safe Harbor, Citation and Fine.

Amend Section 30 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would amend Section 30 to extend the operative date of the safe harbor provision through December 31, 2010. This proposal also updates the authority and reference note to include a reference to Business and Professions Code Section 5096.14.

Factual Basis/Rationale:

Section 5096.14, added to the Business and Professions Code by AB 1868, (Chapter 458, Statutes of 2006, effective September 25, 2006), requires that the Board amend Section 30 to extend the operative period of the safe harbor provision until December 31, 2010. This rulemaking action is necessary to comply with this statutory mandate.

Amend Section 95 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would amend Section 95 to add a provision authorizing the issuance of a citation for a violation of a term or condition of probation. It also designates current Section 95 as subsection (a), and the proposed addition as subsection (b).

Factual Basis/Rationale:

Currently, the Board has no mechanism for penalizing a probationer for a minor violation of the terms of probation such as failing to file a timely quarterly report or failure to complete required continuing education. Adoption of this proposal is necessary to give the Board the option of using citation and fine as a tool for enforcing compliance with the terms of probation.

The lettering of the paragraphs as subsection (a) and subsection (b) is necessary to enhance the clarity and readability of the regulation.

Amend Section 95.2 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would amend Section 95.2 to delete the schedule of fines and instead add a general statement indicating that administrative fines assessed by the executive officer shall not be less than \$100 or more than \$5,000.

Factual Basis/Rationale:

Current Section 95.2 contains a lengthy, cumbersome schedule of fines. This schedule of fines provides for a maximum fine amount of \$2,500. At the time Section 95.2 was originally adopted, \$2,500 was the maximum fine amount authorized by the enabling statute, Business and Professions Code Section 125.9. In 2003, Section 125.9 was amended to increase the maximum authorized fine to \$5,000. Section 95.2 has not yet been updated to reflect this larger fine amount.

The proposed revision is necessary to streamline Section 95.2 by deleting the cumbersome schedule of fines. The revision is also necessary to update Section 95.2 to give the Board the option of issuing fines up to the current statutory maximum of \$5,000. While it is anticipated that most fines will remain at or near the current level, there may be instances in which a fine closer to the statutory maximum is warranted.

Amend Section 95.6 of Title 16 of the California Code of Regulations.

Specific Purpose:

This proposal would add a reference to Business and Professions Code Section 148 both in the text of the regulation and in the authority and reference note. This proposal would also change the upper limit of the range of fines authorized by this section from the \$2,500 to \$5,000.

Factual Basis/Rationale:

Current Section 95.6 does not reference Business and Professions Code Section 148, the section of the Business and Professions Code authorizing the adoption of regulations related to the issuance of citations and fines for unlicensed practice. This proposal would revise Section 95.6 by adding a reference to Business and Professions Code Section 148 to make the statutory references in the section more complete.

Current Section 95.6 authorizes the issuance of fines between \$100 and \$2,500 for unlicensed practice. This section is similar to Section 95.2 in that it has not been updated to reflect the maximum fine amount currently authorized by Business and Professions Code Section 125.9. While the Board very seldom issues fines under this section, this revision is necessary for consistency with Section 95.2 and to give the Board the option of issuing a fine of up to \$5,000 for unlicensed practice should it be warranted.

Underlying Data:

Technical, theoretical or empirical studies or reports relied upon (if any): None

Business Impact:

This regulation will not have a significant adverse economic impact on businesses.

With regard to the proposed amendment to Section 30, extending the time period during which the safe harbor provision remains operative will have no adverse impact on businesses.

With regard to the amendments to the citation and fine regulations, the Board estimates an increase in revenue from citations and fines of approximately five percent. While it is anticipated that most fines will remain at or near the current level, some licensees who are issued a citation may be required to pay a higher fine amount.

Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

The Board originally considered amending Sections 95.2 and 95.6 to permit the maximum fine amount per violation. This alternative was rejected in favor of the proposal that continues the historic practice of setting the maximum fine amount based on each investigation, even if the investigation identified more than one violation. The Board noted that if a licensee had numerous violations, it would be more practical to go forward with an accusation rather than a citation and fine. (See Attachment 1 for the text.)